

**Illinois Department of Revenue  
Regulations**

<b>Title 86 Part 130 Section 130.2005 Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated As Businesses, and Suppliers of Such Persons</b>
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**TITLE 86: REVENUE**

**PART 130  
RETAILERS' OCCUPATION TAX**

**Section 130.2005 Persons Engaged in Nonprofit Service Enterprises and in Similar Enterprises Operated As Businesses, and Suppliers of Such Persons**

a) Sales by Nonprofit Service Organizations

Effective August 1, 1961, nonprofit country clubs, boat clubs, employees' clubs or organizations and other nonprofit social, athletic or recreational organizations, lodges, patriotic organizations, fraternities, sororities, professional and trade associations, civic organizations, labor unions and other nonprofit persons who are not exclusively charitable, religious or educational organizations are liable for Retailers' Occupation Tax when selling tangible personal property at retail to members, guests or others. The same is true of exclusively charitable, religious or educational organizations and institutions with certain limited exceptions.

1) Scope of the Exemption

- A) There still are some very limited exemptions from the Retailers' Occupation Tax for sales by exclusively charitable, religious and educational organizations and institutions. However, the exemption is not available unless the selling organization or institution does qualify as an "exclusively" charitable, religious or educational organization or institution.
- B) It is not enough simply to be a nonprofit organization or institution. In case of doubt concerning any such seller's Retailers' Occupation Tax status, apply to the Department of Revenue for a letter ruling, submitting copies of the Charter or Constitution and By-laws and other relevant information for this purpose.
- C) The exemption that is available under some circumstances for sales by exclusively charitable, religious or educational organizations or institutions is not available in any situation, for example, to sales by such other kinds of nonprofit organizations as civic clubs, nonprofit social and recreational organizations, patriotic organizations, lodges and their auxiliaries, trade associations, etc. Even though the latter types of organizations do much good charitable work, they are not "exclusively" charitable organizations under Illinois Supreme Court decisions, so any retail selling which they do would be subject to the Retailers' Occupation

Tax.

- D) Some of the kinds of organizations which qualify as exclusively charitable organizations are Parent-Teacher organizations, the American National Red Cross, Community Fund or United Fund organizations, the Y.M.C.A., the Y.W.C.A., Boy Scout organizations and Girl Scout organizations.
- E) Exclusively charitable, religious and educational organizations incur Retailers' Occupation Tax liability when they engage in selling tangible personal property at retail except in three situations.

2) Sales to Members, Etc.

- A) The first exception is that the sales by such an organization are not taxable if they are made to the organization's members, or to its students in the case of a school or to its patients in the case of a nonprofit hospital which qualifies as a charitable institution, primarily for the purposes of the selling organization.
- B) Examples of sales that come under this exemption are sales of uniforms, insignia and Scouting equipment by Scout organizations to their members; sales of Bibles by a church to its members, and sales of choir robes by a church to the members of the church's choirs. The selling organization would incur Retailers' Occupation Tax liability if it should engage in selling any of the foregoing items at retail to the public.
- C) The selling of school books and school supplies by schools at retail to students shall not be deemed to be "primarily for the purpose of" the school which does such selling. Consequently, schools incur Retailers' Occupation Tax liability when they engage in selling school books or school supplies at retail to their students or to others.

3) Noncompetitive Sales

- A) The second exception is that sales by exclusively charitable, religious or educational organizations are not subject to the Retailers' Occupation Tax when it can be said that such selling is noncompetitive with business establishments.
- B) The Attorney General has laid down the following tests for determining that such selling is noncompetitive:
  - i) The transactions are conducted by members of the charitable entity and not by any franchisee or licensee.
  - ii) All of the proceeds must go to the charity.
  - iii) The transaction must not be a continuing one but rather should be held either annually or a reasonably small number of times within a year. The test of reasonableness would be an administrative

decision, to be made by the Department of Revenue.

- iv) The reasonably ascertainable dominant motive of most transferees of the items sold must be the making of a charitable contribution, with the transfer of property being merely incidental and secondary to the dominant purpose of making a gift to the charity.
- C) In addition, the Attorney General has stated that there are these further considerations for the purpose of furnishing some guides to the resolution of questions raised by each individual situation:
  - i) The nature of the particular item sold. All other things being equal, the decision as to candy might well be different from the decision as to refrigerators.
  - ii) The character of the particular sale, and the real practical effect upon punitive competition.
- D) Under this second exception, examples of exempt sales are infrequent sales of cookies, doughnuts, candy, calendars or Christmas trees by Scout organizations or by other exclusively charitable organizations or by exclusively religious organizations. In this category, the Attorney General's opinion stresses that the sale must be infrequent, and that the dominant motive of the purchase must be the making of a donation to the charitable or religious organization which conducts the sale, rather than the acquisition of property.
- E) Even if the sale to the public occurs only once a year, the charitable or religious organization which conducts the sale would incur Retailers' Occupation Tax liability if it sells hats, greeting cards or other items for which the dominant motive of the purchase is the acquisition of the property rather than the exchanging of the property merely as a token for the making of a donation.

#### 4) Occasional Dinners and Similar Activities

- A) The third exception is that occasional dinners, socials or other similar activities which are conducted by exclusively charitable, religious or educational organizations or institutions are not taxable, whether or not such activities are open to the public. This exemption extends to occasional dinners, ice cream socials, fun fairs, carnivals, rummage sales, bazaars, bake sales and the like, when conducted by exclusively charitable, religious or educational organizations or institutions, whether the items that are sold are purchased or donated for the purposes of the sale, and even if the sale is open to the public.
- B) For the purposes of this exemption, "occasional" means not more than twice in any calendar year. Where more than two events are held in any calendar year, the organization or institution may select which two events held within that year will be considered exempt. Once the organization or

institution has made the selections, the selections cannot be changed. All other events in that year will be considered taxable.

- C) This exemption does not extend to "occasional" sales, by exclusively charitable, religious or educational organizations or institutions, of hats, greeting cards, cookbooks, flag kits and other similar items because these are not "occasional dinners, socials or similar activities" within the meaning of the Act, and the selling of these kinds of items at retail even on an occasional basis does generally place the selling organization in substantial competition with business establishments.

b) Rules Governing Some Special Kinds of Selling by Exclusively Charitable and Religious Organizations

1) Hospital Sales

- A) Nonprofit hospitals which qualify as exclusively charitable institutions are not taxable when selling food or medicine to their patients in connection with the furnishing of hospital service to them, nor on the operation of restaurant facilities which are conducted primarily for the benefit of the hospital's employees, and which are not open to the public. However, sales made in a hospital cafeteria which is open to the public will be taxable sales.
- B) In the case of hospitals which qualify as charitable institutions, such hospitals are not taxable when selling drugs to anyone because this is for the relief of the sick (which is the hospital's primary purpose) and so is "primarily for the purpose of" such hospitals, thus qualifying such transactions for tax exemption. However, a hospital or hospital auxiliary incurs Retailers' Occupation Tax liability when selling candy, chewing gum, tobacco products, razor blades and the like at retail even when such items are sold only to patients because (unlike food and medicine) these items are not necessary to the furnishing of hospital service, and they are competitive.
- C) The same distinctions apply to nonprofit sanitariums and nonprofit nursing homes when they qualify as exclusively charitable institutions.

2) Gift Shops and Rummage Stores

Charitable or religious organizations incur Retailers' Occupation Tax liability on the retail selling which they do in the course of operating gift shops and rummage stores.

3) Meals

- A) Charitable or religious organizations incur Retailers' Occupation Tax liability on their receipts from sales of meals to the public unless such selling constitutes an occasional dinner or other similar activity, as authorized in subsection (a)(4)(B), above. No more than two such

occasional dinners or other similar activities are authorized in any calendar year. Such sales are tax exempt, provided that all the profits from such sales are used for charitable or religious purposes. If such sales occur more than twice in any calendar year, refer to subsection (a)(4)(B), above.

- B) Also, a church or religious organization does not incur Retailers' Occupation Tax liability on its receipts from sales of meals where the following conditions are met:
  - i) The profits, if any, are used for religious purposes;
  - ii) the meals are confined to the members of such church and their guests and are not open to the public; and
  - iii) the serving of the meals is connected with some religious service or function.
- C) Under the circumstances just described, even if this type of selling of meals is done rather frequently, it is exempt from the Retailers' Occupation Tax because of being in the category of sales to members "primarily for the purposes of" the religious organization (the seller).

#### 4) Special Problems Concerning Sales by Schools

##### A) Dining Facilities

A school does not incur Retailers' Occupation Tax liability on its operation of a cafeteria or other dining facility which is conducted on the school's premises, and which confines its selling to the students and employees of the school. In any instance in which the dining facility is opened up for the use of other persons, all sales that are made at such facility while that condition continues to prevail are taxable.

##### B) Meaning of "Student"

For the purpose of the exemptions under discussion, a "student" is a person who is taking a course from the school for credit.

##### C) School Books and School Supplies

- i) A school incurs Retailers' Occupation Tax liability when selling school books and school supplies to its students or others, for use.
- ii) Schools are not taxable on their sales of school annuals because these are noncompetitive items.

##### D) Clothing and Dormitory Supplies

Schools incur Retailers' Occupation Tax liability when they sell sweaters,

sweat shirts, gym shoes, jackets and other items of clothing to students or others for use. The same is true when a school sells furniture, rugs or other dormitory supplies to users.

E) Miscellaneous Items

A school or school organization incurs Retailers' Occupation Tax liability when it sells soft drinks, candy, peanuts, popcorn, chewing gum and the like to students or to members of the public for use or consumption, where these items are sold at a school book store, through vending machines or otherwise than in a restricted school cafeteria as a part of the selection which the student has in buying meals in such cafeteria. However, the proceeds from the sale of tangible personal property by teacher-sponsored student organizations affiliated with an elementary or secondary school located in Illinois are exempt from Retailers' Occupation Tax. (See Section 2-5(6) of the Act and 86 Ill. Adm. Code 130.2006.)

c) Registration and Returns

- 1) Nonprofit organizations which incur Retailers' Occupation Tax liability as retail sellers of tangible personal property are required to register with the Department and file periodic returns. Returns are due monthly, except that if the taxpayer's average monthly liability to the Department is \$50.00 or less, the taxpayer may apply to the Department for permission to file one return each year covering the calendar year, with the return being due by January 31 of the following year. Whenever tax is due for a return period, the remittance for the tax should accompany the return which discloses such tax to be due.
- 2) For more information concerning the filing of returns with the Department, see Subpart E of this Part.
- 3) Registration and return forms may be obtained from the Department on request.
- 4) In the case of a church, it is recommended that a single Certificate of Registration be applied for by the church and that this be allowed to cover the selling activities of that church and all of its organizations. Registration must be obtained prior to the commencement of selling activities. (Section 2a of the Act.)
- 5) In the case of public schools or school organizations which incur some Retailers' Occupation Tax liability so as to be required to register with the Department of Revenue, the Board of Education which governs the school district (rather than each individual school or school organization) should apply to the Department for a Certificate of Registration, and such Board of Education should file a single return for the return period covering all the taxable school activities that occur under its jurisdiction during the return period covered by the return.

d) Suppliers of Nonprofit Institutions, Associations and Organizations

- 1) Suppliers of nonprofit institutions, associations and organizations do not incur Retailers' Occupation Tax liability when they sell tangible personal property to

any such purchaser for resale in any form as tangible personal property.

- 2) Suppliers of such purchasers incur Retailers' Occupation Tax liability when they sell tangible personal property to any such purchaser at retail (i.e., for use or consumption by the purchaser or to be given away by the purchaser, and not for resale in any form as tangible personal property), provided that the tax does not apply to receipts received by the seller from sales of any kind made to any purchaser of this character who is able to qualify as a corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes, or any not-for-profit corporation, society, association, foundation, institution or organization which has no compensated officers or employees and which is organized and operated primarily for the recreation of persons 55 years of age or older.
- 3) Many difficult questions of interpretation will arise in applying the above proviso. Each case will have to be decided on its own facts, but a few principles based on Supreme Court decisions in somewhat analogous cases are stated hereinbelow for guidance.

e) Nonprofit Social, Recreational and Athletic Organizations -- Nonprofit Fraternal Organizations

- 1) A purchaser is not necessarily qualified for this total exemption as to receipts received by the seller from all sales made to such purchaser merely because of the fact that the purchaser is a not-for-profit service organization. For example, if the purchaser is incorporated or otherwise organized primarily to provide entertainment, social, recreational or athletic activities or facilities to its members, the purchaser is not organized and operated exclusively for charitable, religious or educational purposes. Such a purchaser is not organized and operated exclusively for charitable purposes even though it does some charitable work. This is true even though such purchaser is organized and operated as a not-for-profit corporation, association, etc.
- 2) The same is true of nonprofit fraternal benefit societies which derive their funds from their members and are organized primarily to provide different forms of insurance benefits to their members and to persons standing in designated relationships to their members, except when such fraternal benefit societies are organized under a statutory provision which expressly declares them to be exclusively charitable organizations.
- 3) Nonprofit fraternities and sororities are not considered to be organized and operated exclusively for charitable, religious or educational purposes.

f) Lodges

- 1) Similarly, nonprofit corporations, societies, associations, etc., which have, as a substantial purpose, the providing of a lodge system with ritualistic work and social activities for members, and which derive their funds in large measure from such members, are not organized and operated exclusively for charitable, religious or educational purposes, even though they engage to some extent in

one or more of these activities, because a substantial purpose for the existence of such an organization is one which does nothing to relieve the public of a duty to the persons benefited and otherwise bestows no benefit upon the public.

- 2) For example, the Supreme Court has held a Masonic Lodge not to be charitable and has held that a Masonic Home for aged and destitute Masons is charitable. The Department will follow that distinction in this Section when separate legal entities are involved, considering receipts from retail sales to the former to be taxable, and considering receipts received by the seller from retail sales made to the latter to be exempt. However, if the same legal entity operates the noncharitable lodge and the charitable home, the Department will not regard such entity (when making purchases) as coming within this exemption. This is true because the importance of the noncharitable lodge function makes it impossible to say that such a purchaser is organized and operated exclusively for charitable, religious or educational purposes.

g) Nonprofit Professional and Trade Associations -- Labor Unions -- Civic Clubs -- Patriotic Organizations

Nonprofit Bar Associations, Medical Associations, Lions Clubs, Rotary Clubs, Chambers of Commerce and other professional, trade or business associations and labor unions, which draw their funds largely from their own members, and as to which an important purpose is to protect and advance the interests of their members in the business world, are not organized and operated exclusively for charitable or educational purposes, even though such organizations may engage in some charitable and educational work. The same conclusion applies to the American Legion, Veterans of Foreign Wars, Amvets, the Daughters of the American Revolution and other similar nonprofit patriotic organizations.

h) Organization Must be Nonprofit to be Exclusively Charitable

On the other hand, a purchaser cannot qualify as being organized and operated exclusively for charitable purposes unless it is organized and conducted on a not-for-profit basis, with no personal profit inuring to anyone as a result of the purchaser's operation. The payment of reasonable salaries to necessary employees for services actually rendered does not convert a nonprofit enterprise into a business enterprise.

i) Other Conditions Necessary for Being Exclusively Charitable

- 1) In the case of a corporation, there can be no capital structure nor capital stock, no provision for disbursing dividends or other profits and no payment of director's fees if the corporation seeks to qualify as an exclusively charitable corporation.
- 2) The Supreme Court has stated that a charitable purpose may refer to almost anything which promotes the well-being of society and which is not forbidden by law; but to qualify as a charity, the purchaser must be organized and operated to benefit an indefinite number of the public. There may be restrictions on the group to be benefited (such as an organization for women, for children, for the



aged, etc.), but the service rendered to those eligible for benefits must, nevertheless, in some way relieve the public of a duty which it would have to such beneficiaries or otherwise confer some benefit on the public.

j) Determination of Purpose for Which Organization or Institution is "Organized and Operated"

- 1) In the case of a corporation, the purpose for which it is "organized" will be determined by reference to its Charter. For example, it has been held by the Supreme Court that an Elks Lodge, whose Charter stated it was incorporated for the mutual benefit and social intercourse of its members, was not "organized" exclusively for "charitable purposes", even though the corporation engaged in a considerable amount of charitable work.
- 2) In the case of an unincorporated society, association, etc., the Constitution and Bylaws thereof will determine the purpose for which it is organized.
- 3) To qualify for total exemption the purchaser must be organized "and operated" exclusively for charitable, religious or educational purposes.

k) Examples of Exempt Buyers

- 1) Some examples of purchasers which come within this exemption are churches, Sunday Schools, Church Ladies' Aid Societies, Salvation Army and other nonprofit corporations, societies, associations, foundations and institutions organized and operated exclusively for religious purposes (but not including Ministers or other individuals when making purchases from their own funds); corporations, societies, associations, foundations and institutions organized and operated exclusively for educational purposes, whether such purchaser is organized and operated as a business enterprise or on a not-for-profit basis (but see subsection (1) below); homes for the aged which are not organized or operated as a business enterprise with a view to profit and which otherwise qualify as charitable institutions; nonprofit corporations, societies, associations, foundations and institutions organized and operated exclusively for the purpose of conducting scientific research of a character that would be beneficial to the public (held to be a charitable purpose); the American National Red Cross, Community Fund or United Fund organizations, the Y.M.C.A., the Y.W.C.A., Boy Scouts of America (as a corporation, but not as individuals), Girl Scouts of America (as a corporation or association, but not as individuals), nonprofit Parent-Teacher Associations, the National Safety Council and similar organizations and nonprofit societies for the prevention of cruelty to children or animals (all classified as charitable); free public libraries that are not operated for profit and that are not operated by commercial enterprises (whether such libraries are governmental units or not), and local housing authorities.
- 2) These examples are illustrative, but not exhaustive.
- 3) To come within this exemption, the purchaser (in addition to being organized and operated exclusively for charitable, religious or educational purposes) must be a "corporation", a "society", an "association", a "foundation" or an

"institution".

I) "Educational Purposes" and "School" Defined and Illustrated

- 1) Receipts received from retail sales to corporations, societies, associations, foundations and institutions that are organized and operated exclusively for educational purposes are not taxable. There is no specific exemption in the Constitution for "educational purposes" as to any kind of tax, but Section 6 of Article IX of the Illinois Constitution authorizes the General Assembly to grant a property tax exemption for property that is used for "school...purposes". Consequently, the Department will construe the Retailers' Occupation Tax exemption for "educational purposes" as meaning for "school...purposes", as the phrase "school...purposes" has been interpreted or may be interpreted by the Supreme Court. Section 2h of the Act provides the statutory definition of "a corporation, society, association, foundation or institution organized and operated exclusively for educational purposes."
- 2) The Supreme Court has said that a school is a place where systematic instruction in useful branches of learning is given by methods common to schools and institutions of learning and does not include schools for teaching dancing, riding and deportment. In that connection, the Supreme Court has held that an organization which conducts a four-week training school each summer for funeral directors is not a school because the courses given and the intensity of their instruction do not compare favorably with those in a department of mortuary science and mortuary practice at regular colleges and universities, but represent only a superficial or brief instruction in courses constituting a minor part of the study of mortuary science.
- 3) Consequently, flying schools, driving schools, art association schools, modeling schools, charm schools, and the like are not organized and operated exclusively for educational purposes because they do not offer courses which constitute systematic instruction in useful branches by methods common to public schools and which compare favorably in their scope and intensity with the course of study presented in tax-supported schools within the meaning of the Retailers' Occupation Tax Act.
- 4) However, the exemption for educational purposes includes private schools (such as parochial grade and high schools, private colleges and the like) as well as government-owned tax-supported schools so long as the institution qualifies as a school as hereinabove described.
- 5) Also, the Retailers' Occupation Tax "educational purposes" exemption is not limited by the statute to nonprofit institutions. The exemption would include vocational or technical schools or institutions organized and operated exclusively to provide a course of study of not less than 6 weeks duration and designed to prepare individuals to follow a trade or to pursue a manual, technical, mechanical, industrial, business or commercial occupation (such as a business-operated law school) as long as the institution otherwise qualifies as a school within the meaning of this subsection and the Act. (See subsection (q) of this Section and Section 2(h) of the Act.)

- 6) In addition, for Property Tax purposes, the Supreme Court has held that an association, which is not itself a school in the ordinary sense, but which provides a substantial service in improving the educational standards of schools (such as the Association of American Medical Colleges), is within the "school purposes" exemption, so the Department will consider such an organization to be organized and operated exclusively for "educational purposes" for Retailers' Occupation Tax purposes.
- 7) Literary societies, though somewhat educational, are mainly for the benefit of their own members as a hobby or pastime and do not relieve the public of a duty nor contribute sufficiently to the public to qualify for an exemption, and they are not places where systematic instruction in useful branches of learning is given by methods common to schools and institutions of learning in the ordinary or commonly accepted meanings of those terms.

m) Nonprofit Hospitals and Sanitaria

- 1) In the case of privately-owned hospitals, in addition to the fact that the hospital must be organized and operated as a nonprofit enterprise (with proceeds, if any, over expenses being put into the expansion of the hospital's services, equipment and physical plant), some of the tests which the Supreme Court has required to be met before the hospital can qualify as being organized and operated exclusively for charitable purposes are that the hospital must not discriminate against patients or doctors because of race, color, creed or religion, and that the hospital must not refuse admittance to any patient because of his inability to pay for hospital service.
- 2) It is immaterial that most of the hospital's patients may be paying patients if the hospital does not adopt any policy which is calculated to prevent persons who cannot pay from seeking and obtaining admittance to the hospital.
- 3) Delaying the admittance of nonemergency cases while the hospital makes an investigation to try to find someone who will give the prospective patient financial help has been held not to be an obstacle to admittance if the hospital does not engage in such delaying tactics in the case of emergency patients and if the hospital ultimately admits destitute patients notwithstanding the fact that they cannot pay for services and cannot procure financial help.
- 4) A hospital does not lose its character as a charitable organization because of the fact that it refuses admittance to patients who are suffering from dangerously contagious diseases.
- 5) Government-owned hospitals are deemed by the Department to be organized and operated exclusively for charitable purposes within the meaning of this Section.
- 6) The principles stated in this subsection with respect to hospitals apply also to sanitaria and clinics.

n) Meaning of "Exclusively"

- 1) Although the provision of the Retailers' Occupation Tax Act under discussion, in excluding receipts from all sales to certain kinds of purchasers, refers to them as being organized and operated "exclusively" for charitable, religious or educational purposes, the Supreme Court has not given the word "exclusively" its most literal interpretation under similar circumstances because of the virtual impossibility of anyone being engaged "exclusively" in anything, and so the Department will follow a similar policy in applying the word "exclusively", as used in the Retailers' Occupation Tax Act and in this Section, in order to carry out the manifest intention of the General Assembly.
- 2) However, if a substantial purpose or activity of the purchaser is not charitable, religious or educational, the Department will not consider the purchaser to be organized and operated exclusively for charitable, religious or educational purposes within the meaning of the Act.

o) Educational, Scientific and Similar Institutions, Associations and Organizations Operated as "Business" Enterprises -- When Liable For Tax

Persons engaged habitually, for livelihood or gain, in hospital, educational, religious, scientific, social or cultural enterprises are among those who are engaged in a service occupation which is nevertheless a "business" within the meaning of the Act. When persons who operate businesses of the type described in the preceding sentence sell tangible personal property to purchasers for use or consumption apart from their rendering of service, such persons incur Retailers' Occupation Tax liability. This is the case, for example, where hospitals which are conducted as "business" enterprises operate public dining rooms, public pharmaceutical dispensaries or otherwise sell tangible personal property at retail to the general public, or where schools which are operated as "business" enterprises sell tangible personal property at retail to the general public or make retail sales to students of clothing, dormitory supplies or other items which cannot be said to be used "primarily for the purposes of" the school. Also, business-operated schools incur Retailers' Occupation Tax liability on their retail sales of school books and school supplies to their students and faculty members.

p) Educational, Scientific and Similar Institutions, Associations and Organizations Operated as "Business" Enterprises -- When Not Liable for Tax

- 1) Persons of the type described in the preceding paragraph are engaged primarily in rendering service, and, to this extent, they are engaged in a service occupation. To the extent to which they engage in such service occupation, they are not required to remit Retailers' Occupation Tax measured by any of their receipts which they realize from their rendering of service, including those receipts which represent the price of tangible personal property which they transfer to others as a necessary incident to their rendering of service. The sale of meals to patients and the furnishing of medicine for a consideration to patients in the course of treatment by business-operated hospitals and business-operated licensed nursing homes come within this service occupation exemption

for Retailers' Occupation Tax purposes. However, the tax liability of the person engaged in such service occupation is governed by the Service Occupation Tax Act (see Subpart A of the Service Occupation Tax Regulations, 86 Ill. Adm. Code 140).

- 2) Business-operated schools do not incur Retailers' Occupation Tax liability on their sales of meals in a dining facility which is located on the premises of the school and whose use is confined to the students and employees of the school.

q) Suppliers of Educational, Scientific and Similar Institutions, Associations and Organizations Operated as "Business" Enterprises

- 1) Suppliers of educational, scientific and similar institutions, associations and organizations operated as "business" enterprises do not incur Retailers' Occupation Tax liability when they sell tangible personal property to any such purchaser for resale either in connection with or apart from the purchaser's rendering of service to others. However, for information concerning the fact that purchases of food, medicine and other tangible personal property by business-operated hospitals or business-operated licensed nursing homes for retransfer to patients as an incident to service are subject to the Service Occupation Tax, see Subpart A of the Service Occupation Tax Regulations. Suppliers of purchasers of the kind referred to in the first sentence of this paragraph incur Retailers' Occupation Tax liability when they sell tangible personal property to any such purchaser at retail (i.e., for use or consumption by the purchaser or to be given away by the purchaser, and not for resale in any form as tangible personal property), provided that the tax does not apply to receipts received by the seller from sales of any kind made to any purchaser of this character who is able to qualify as a school. In excluding, from the measure of the tax, receipts received by the seller from sales of any kind to a school, the Act does not distinguish between business and nonprofit schools.

- 2) Nevertheless, while the Department recognizes that a purchaser may qualify as a school for exemption purposes notwithstanding the fact that the purchaser is organized and operated as a business enterprise, the Department takes the position that such a purchaser cannot be organized and operated exclusively for charitable or religious purposes if such purchaser is organized and operated as a business enterprise with a view to profit.

r) Reporting – Records -- Burden of Proof

- 1) When a seller claims exemption from the Retailers' Occupation Tax for receipts received by the seller from his sale of tangible personal property to a corporation, society, association, foundation or institution organized and operated exclusively for charitable, religious or educational purposes, the seller should include such receipts in his Retailers' Occupation Tax return form, but then should deduct such receipts on the line provided for that purpose in the return form (see Subpart E of this Part).
- 2) The seller must maintain adequate books and records to sustain such deductions (see Subpart H of this Part).

- 3) Sellers claiming the benefit of this exemption are cautioned against laxity in claiming the benefit of this exemption without verifying the status of the purchaser since the seller will have the burden of proof in establishing his right to any such claimed exemption. The Courts have held repeatedly that the burden of sustaining a right to tax exemption is on the person claiming such exemption. Tax exemption provisions in statutes are strictly construed against the taxpayer, although the words employed in such provisions will be given their commonly accepted and understood meanings.

(Source: Amended at 24 Ill. Reg. 15104, effective October 2, 2000)